IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

~~76-665~~

No.

ALAN ERNEST, Next Friend of Unborn Child Roe
And All Others Similarly Situated

Petitioner

vs.

GERALD R. FORD, President of the United States;
EDWARD H. LEVI, Attorney General of the United
States; EARL J. SILBERT, United States Attorney
for the District of Columbia

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

ALAN ERNEST
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Alexandria, Va 22311

The Petitioner Pro Se

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Alan Ernest, the petitioner, hereinafter referred to as "next friend," prays that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit before judgment, for the reasons presented herein.

OPINIONS BELOW

The Court below issued no opinion.

JURISDICTION

1. The order of the United States District Court for the District of Columbia was entered on October 19, 1976. (Appendix A-1, infra)

2. There has been no order respecting either a rehearing or extension of time within which to petition for certiorari.

3. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 28 U.S.C. 2101(e) and Rule 20, Supreme Court Rules. This is a petition for certiorari to the court of appeals before judgment. Docket NO. 76-2014.

QUESTIONS PRESENTED

1. The next friend charges that Roe v Wade, 410 U.S. 113, is based upon false evidence. If the Supreme Court cannot answer the charge, Roe v Wade must be overruled. The singular question is: Can the Supreme Court answer the charge?

2. The next friend demands a prospective ruling that any state or federal judge who blindly obeys a palpable, dangerous, and deliberate unconstitutional decision, such as Roe v Wade, manifestly violates the oath to uphold the Constitution as the supreme law of the land.

CONSTITUTIONAL PROVISIONS INVOLVED

The parts of the Fifth and Fourteenth Amendments applicable to Roe v Wade are sufficiently known to the Court not to require quotation.

STATEMENT OF THE CASE

The next friend filed an action for declaratory

injunctive and mandamus relief in the United States District Court for the District of Columbia on September 17, 1976, demanding,among other things, that the court adjudge Roe v Wade to be unconstitutional and enjoin its operation in the District.

The grounds for this action is that Roe v Wade is unconstitutional because it is based upon false evidence to which the Supreme Court has twice deliberately adhered; and that any federal judge who claimed that he must be blindly bound by such palpable, dangerous, and deliberately illegal orders would manifestly violate the oath he has sworn to uphold the Constitution as the supreme law of the land.

Since the documentation to prove these charges is too voluminous to present here, a copy has been placed in the file of this case in the clerk's office. See EXHIBIT A: EVIDENCE FOR JUDICIAL NOTICE CONCERNING ROE v WADE. (Hereinafter "Exhibit A")

The legal authority showing that a state or federal judge who blindly obeys illegal Supreme Court orders manifestly violates the oath to uphold the Constitution as the supreme law of the land has likewise been placed in the file of this case in the clerks office. See EXHIBIT B: THE DUTY OF STATE AND FEDERAL JUDGES TO UPHOLD THE UNITED STATES CONSTITUTION AS THE SUPREME LAW OF THE LAND AND PROVIDE A CHECK AND BALANCE ON ALL BRANCHES OF THE FEDERAL GOVERNMENT, INCLUDING THE UNITED STATES SUPREME COURT. (Hereinafter "Exhibit B")

On October 7, 1976, the next friend filed a motion for summary judgment, and that same day, the respondents filed a motion to dismiss. In an order dated October 19, 1976, the trial court dismissed the case with prejudice. The respondents never replied to the motion for summary judgment. Exhibit A appears to establish the falsity of the Supreme Court's evidence beyond the power of any reasonable

person to deny.

In the trial court, the respondents presented no meritorious defense to vindicate the Supreme Court's conduct; they effectually argued that the trial court must be blindly bound by any and all Supreme Court orders, legal or illegal, no matter how palpably, dangerously and deliberately unconstitutional such orders may be. Exhibit B shows that contention to be erroneous. It seems unlikely that respondents will attempt any meritorious defense of the Supreme Court's conduct in these proceedings either; Exhibit A plainly shows that there is no defense of what the Supreme Court has done.

Exhibit A, at 30-32, establishes that all the next friend need do is raise reasonable doubts about the Court's conclusion that the Constitution absolutely excludes the unborn as persons within its protection and absolutely withdraws all power from the states to protect the lives of the unborn by law, then Roe v Wade is unconstitutional. Certainly, even common sense mandates that if reasonable people can reasonably believe that, based upon false factual assertions, the Supreme Court has ruled millions of persons out of the human race as inferiors and excluded them from the protection of the Constitution so that they may be exterminated for convenience, then Roe v Wade is null and void and must be overruled. However it is submitted that Exhibit A is so conclusive that reasonable people can find, beyond a doubt based upon reason, that Roe v Wade is unconstitutional, null and void.

The next friend does not believe that the Supreme Court will be able to prove Exhibit A to be wrong. Unless the Supreme Court can prove Exhibit A to be false, in the same careful, detailed and authoritative manner that Exhibit A proves indispensable parts of the Supreme Court's evidence to be false, then the charges must stand. That is, the Supreme Court must now either answer the charges so

conclusively that no reasonable person can doubt that the charges are false, or the Supreme Court must overrule Roe v Wade.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the United States is charged with unconstitutionally exterminating millions of lives by false evidence to which it has now twice deliberately adhered.

Concerning the charges:

1. The Supreme Court has now been twice petitioned to overrule Roe v Wade on the grounds that this newly discovered evidence indicated that the Supreme Court rested its abortion decision upon assertions that are factually wrong;and the Supreme Court rejected both applications without comment or explanation, failing either to deny the charges or to answer the challenge.

2. The circumstances indicate that the reason for this is that the Supreme Court cannot deny that Roe v Wade is based on false evidence and refuses to face that millions of lives have been unconstitutionally exterminated.

For example, Exhibit A shows that the falsity of the Supreme Court's factual assertions is documented by such overwhelming authority, that the falsity appears proved beyond the power of any reasonable person to deny.

In addition, the second application was an amici curiae brief supported by twenty-three organizations from around the nation, representing over sixty thousand people. Amicus briefs are especially intended for situations just such as this, in which there is newly discovered evidence not presented by the parties, and the Supreme Court might wrongly

decide an important national issue. Since the purpose of an amicus brief is to ensure that all the relevant facts are before the Court, it is uncommon for the Supreme Court to reject them.

Consequently, do the circumstances not raise the question that the reason the Supreme Court rejected the amici brief is that it could not deny the charges and refused to face them?

3. Furthermore, in the usual course of human affairs, failure to deny a charge is tantamount to an admission that the charge is true. By what sound justification would the Supreme Court receive official applications charging that a constitutional decision affecting the most fundamental right, the right to have one's life protected by due process of law, rested on false evidence, and peremptorily reject them, without comment or explanation, denial or answer, and continue to adhere to its challenged decision?

Consequently, in absence of explanation, are the American people not entitled to believe that the reason for this astonishing conduct is that the Supreme Court cannot deny that millions of lives have been unconstitutionally exterminated by false evidence and refuses to face it?

4. The ancient test of judicial validity is that no judgment shall be passed until all the facts have been heard. As was asked in John 7:51 (New English Translation): "Does our law permit us to pass judgment on a man unless we have first given him a hearing and learned the facts?" And the Supreme Court itself has held that "the fundamental requisite of due process of law is the opportunity to be heard." Grannis v Ordean, 234 U.S. 385, 394 (1914). Yet is it not just this ancient and indisputable right to present all the facts that the Supreme Court has denied?

5. Each Justice is "bound by oath" to uphold the Constitution, and holding office is conditioned on "good behaviour." In regards to this:

FIRST: In Roe v Wade, the Supreme Court asserted facts to be true, and has deliberately adhered to them through two separate challenges. Exhibit A shows these unqualified assertions of certitude to be not true. And as Abraham Lincoln warned: "(H)e who asserts a thing which he does not know to be true, falsifies as much as he who knowingly tells a falsehood." 3 The Collected Works of Abraham Lincoln 22(Basler ed. 1953)

SECOND: Furthermore, it appears that the Supreme Court could not have reached its abortion conclusion but for these false assertions; and that the Court is now deliberately adhering to them. Would not the charge that Lincoln brought against the Dred Scott decision now pertain to Roe v Wade: "It is the first of its kind; it is an astonisher in legal history. It is a new wonder of the world. It is based upon falsehood in the main as to the facts . . . upon which it stands." 2 The Collected Works of Abraham Lincoln 495(Basler ed. 1953)

THIRD: As Blackstone was quoted in The Federalist Papers, No. 84: "To bereave a man of life . . . without . . . trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation." Has the Supreme Court not, in effect, passed just such a sentence of death upon millions and refused to even hear the evidence?

6. Based upon the above facts which any truth seeking person can independently verify:

FIRST: It is charged that the Supreme Court of the United States has unconstitutionally exterminated millions of lives by false evidence to which it has now twice deliberately adhered.

SECOND: It is charged that any Supreme Court Justice who attempts to change the Constitution by a deliberate and premeditated falsification of history manifestly violates the oath he has sworn to uphold the United States Constitution as the supreme law of the land.

THIRD: It is charged that government by laws, derived from the consent of the governed, and based upon truth and reason, has been silently and surreptitiously supplanted by government by men, independent of the people, and based upon arbitrary will, false evidence and illegal killing.

No doubt these are the most astounding charges against a court in the entire history of the world. Can it be possible that the Supreme Court will neither face the charges and place itself above suspicion by proving the charges so false that no prudent person could see any reasonable basis for them, nor overrule Roe v Wade, but just keep silently and imperiously adhering to Roe v Wade? A third peremptory denial of a full and fair hearing on these charges can not be understood by honest and impartial people as other than an open admission that the charges are true.

CONCLUSION

The veracity of the Supreme Court and its judicial truth seeking process is challenged and this demands that the Court either grant this petition for a writ of certiorari or summarily overrule Roe v Wade sua sponte.

Alan Ernest
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The Petitioner Pro Se

APPENDIX

Order of the Trial Court

United States District Court
For The District Of Columbia

Unborn Child Roe, et al., Plaintiffs,	)	
vs.	)	Civil Action No. 76-1744
Gerald R. Ford, et al., Defendants.	)	

ORDER

Upon consideration of defendants Edward H. Levi and Earl J. Silbert motion to dismiss the complaint and the memorandum in support thereof, and the court being fully advised in the premises, it is by the Court, this 19th day of October, 1976,

ORDERED that the complaint be and the same is hereby dismissed with prejudice for lack of subject matter jurisdiction and failure to a claim upon which relief can be granted.

/S/ Aubrey E. Robinson Jr.
United States District Judge

No. 76-665

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PETITIONER

v.

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ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner Alan Ernest brought suit in the United States District Court for the District of Columbia on September 17, 1976, demanding, *inter alia,* that the court overrule *Roe* v. *Wade,* 410 U.S. 113. Pet. 2-3. On October 19, 1976, the district court dismissed the complaint with prejudice for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted. Pet. App. A-1. Petitioner filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit on October 28, 1976, and docketed the record in that court on November 11, 1976. The same day he filed this petition for a writ of certiorari to the court of appeals in advance of judgment, alleging jurisdiction under 28 U.S.C. 1254(1) and 28 U.S.C. 2101(e).

This case does not present the extraordinary circumstances justifying certiorari before judgment under Rule 20 of this Court's rules. See *United States* v. *Nixon*, 418 U.S. 683, 686-687; *Youngstown Co.* v. *Sawyer*, 343 U.S. 579; *United States* v. *Mine Workers*, 330 U.S. 258; *Carter* v. *Carter Coal Co.*, 298 U.S. 238. Moreover, petitioner's claims are without merit.

Petitioner, who captions himself in his petition as the "Next Friend of Unborn Child Roe And All Others Similarly Situated," lacks standing since he cannot demonstrate that he suffers any injury in fact. *Simon* v. *Eastern Kentucky Welfare Rights Organization*, Nos. 74-1124 and 74-1110, decided June 1, 1976. In addition, the named defendants, *i.e.*, the President, the Attorney General, and the United States Attorney for the District of Columbia, have no functions with respect to the relief petitioner seeks.[1] Finally, petitioner's claim (Pet. 3) that *Roe* v. *Wade* should be overruled because the decision was based on "false evidence" is insubstantial.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1977.

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[1]Petitioner previously sued the Attorney General of the State of Virginia, asserting similar claims. See *Ernest* v. *Miller*, No. 75-174, certiorari denied, 423 U.S. 893.

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PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

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PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

The respondents presented four objections for why the petition should not be granted (petitioner waives any objection that the opposition was filed almost two weeks late without prior application for extension):

1. "This case does not present the extraordinary circumstances justifying certiorari before judgment under Rule 20 of this Court's rules." Opposition at 2. The respondents cited the Nixon case as properly extraordinary. The next friend submits to all impartial people that the charge that the Supreme Court has unconstitutionally exterminated millions of lives by false evidence compares to the whole of Watergate as World War II might compare to a drunk and disorderly.

2. "Petitioner . . . lacks standing since he cannot demonstrate that he suffers any injury in fact." Opposition at 2. The respondents assume that a next friend or guardian must suffer an injury in fact, as well as the infant or incompetent person represented. The single case cited as authority for this, Simon v Eastern Kentucky Welfare Rights Organization, had nothing at all to do with next friends or guardians. Rule 17(c), Federal Rules of Civil Procedure expressly allows guardians or next friends to sue or defend, which is obviously the only way that these classes of helpless persons can assert their legal rights in a court.

3. "In addition, the named defendants . . . have no functions with respect to the relief petitioner seeks." Opposition at 2. The United States Attorney for the District of Columbia is charged by law with enforcing the D.C. Abortion statute, 22 D.C. Code 201. See 23 D.C. Code 101. The complaint demanded that the court order the United States Attorney to enforce that abortion statute and cease following Roe v Wade.

4. "Moreover, petitioner's claims are without merit." Opposition at 2. Now, exactly, if defenders of Roe v Wade wish to prevail, they must prove the charge that Roe v Wade is based on false evidence to be "without merit."

Since the whole case turns on this very point, the assertion deserves special scrutiny. The statement that the "claims are without merit" is peremptorily asserted as if it were indisputable fact. Unfortunately, this conclusion upon which the whole case depends, is unsupported by any documentation whatsoever,- not so much as one single attempt to prove one single fact or authority in Exhibit A to be "without merit." Thus the Solicitor General offers his veracity as proof for this assertion.

Of course, the Solicitor General could have

avoided this difficulty about his veracity by basing this objection on cited authority as next friend did in Exhibit A. Then the contest would have turned into the normal legal channels of testing and cross-examining authorities.

Exhibit A shows that the next friend has essentially taken up where Mr. Justice White and Mr. Justice Rehnquist left off in their Roe v Wade dissents. Does the Solicitor General assert his veracity that these dissents are "without merit?" Exhibit A at 1-30 complements Mr. Justice Rehnquist's dissent by documenting that the Supreme Court fabricated false evidence to prove that the 19th century abortion statutes were not intended to protect the lives of unborn persons. Does the Solicitor General offer his veracity as proof that this documentation is "without merit?" Exhibit A* at 30-32 complements Mr. Justice White's dissent about reasonable men reasonably differing. It shows that Chief Justice John Marshall, acknowledging the limits on the Supreme Court's power, held that the Supreme Court must give the Constitution the construction "contemplated by the framers;" that the Court may not create exceptions to express and universal terms (such as "any person") unless "all mankind would, without hesitation, unite in rejecting the application," and the Court can demonstrate that had the particular case been suggested to the framers, "the language would have been varied, as to exclude it;" and on top of this, that "in no doubtful case" would the Supreme Court nullify legislation. Exhibit A at 30-32 traces Chief Justice John Marshall's limits on the Court's power through one and a half centuries of Supreme Court holdings, the Constitution itself, The Federalist Papers, and into the Federal Convention of 1787. Does the Solicitor General pledge his veracity that all this authority on the limit of the Supreme Court's power is "without merit?"

If the defenders of Roe v Wade wish to disprove the charge that Roe v Wade is based on false

evidence, they must prove the charge to be "without merit." It needs no authority to establish that if reasonable people can reasonably believe that the Supreme Court has fabricated false evidence to rule millions of persons out of the human race as inferiors so that they may be exterminated for convenience, then Roe v Wade must be overruled. However, next friend submits that Exhibit A is so conclusive, that reasonable people can find, beyond a doubt based on reason, that the Supreme Court could not have reached its conclusion in Roe v Wade but for false factual assertions.

The Court surely understands that the only way that Exhibit A can be shown to be "without merit" is not by naked assertions supported by no evidence whatsoever, ostensibly based on nothing more than closing the eyes and refusing to see, but only by the same careful, detailed and authoritative manner that Exhibit A proves indispensable parts of Roe v Wade to be "without merit." Is is self-evident that this newly discovered evidence in Exhibit A* must be given a full and fair hearing before the Supreme Court of the United States.

Alan Ernest

The Petitioner Pro Se

*An Amended Exhibit A has been filed in the clerk's office that adds new authority at p. 31.2.